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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,
Plaintiff, Counter-defendant,
v.
APPLE INC.,
Defendant, Counterclaimant.

Case No. 4:20-cv-05640-YGR-TSH

**EPIC GAMES, INC.'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL THE
JOINT DISCOVERY LETTER BRIEF
AND SUPPORTING EXHIBITS**

Judge: Hon. Magistrate Thomas S. Hixson

EPIC GAMES, INC.'S ADMINISTRATIVE MOTION TO FILE UNDER SEAL THE JOINT DISCOVERY LETTER
BRIEF AND SUPPORTING EXHIBITS
Case Nos.: 4:20-cv-05640-YGR-TSH

1 Epic Games, Inc. (“Epic”) brings this administrative motion under Civil Local
 2 Rules 7-11(a) and 79-5(d)-(e) for an order granting Epic leave to file under seal the Joint
 3 Discovery Letter Brief Regarding Epic’s Requests For Production Of Documents (the “Joint
 4 Discovery Letter Brief”) and Supporting Exhibits 1-8.

5 Civil Local Rule 79-5 provides that documents, or portions thereof, may be sealed
 6 if a party “establishes that the documents, or portions thereof, are privileged, protectable as a trade
 7 secret or otherwise entitled to protection under the law.” Civ. L.R. 79-5(b). Under this standard, a
 8 party seeking to seal a document generally must overcome the “strong presumption in favor of
 9 access” that applies to court documents other than those that are traditionally kept secret.

10 *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citations omitted).
 11 However, the “public has less of a need for access to court records attached only to non-
 12 dispositive motions because those documents are often ‘unrelated, or only tangentially related to
 13 the underlying cause of action.’” *Id.* at 1179 (citations omitted). Instead, a “‘good cause’ showing
 14 under Rule 26(c) [of the Federal Rules of Civil Procedure] will suffice to keep sealed records
 15 attached to non-dispositive motions.” *Id.* at 1180; *In re NCAA Student-Athlete Name & Likeness*
 16 *Licensing Litig.*, 2013 WL 3014144, at *1 (N.D. Cal. Jun. 17, 2013). A party seeking to seal such
 17 material must make a “particularized showing of good cause with respect to any individual
 18 document.” *San Jose Mercury News, Inc. v. U.S. Dist. Court, N. Dist. (San Jose)*, 187 F.3d 1096,
 19 1103 (9th Cir. 1999). Sealing requests must also be “narrowly tailor[ed].” Civ. L.R. 79-5(b).

20 Subsection (e) of Local Rule 79-5 sets forth procedures that apply when a party
 21 seeks to file information designated as confidential by an opposing party. This Administrative
 22 Motion is based on Defendant Apple Inc.’s (“Apple”) designation of information in the Joint
 23 Discovery Letter Brief and its exhibits as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 24 ATTORNEYS’ EYES ONLY” under the protective order in the above-captioned action. (*Epic*
 25 *Games, Inc. v. Apple Inc.*, No. 20-cv-05640-YGR-TSH, ECF No. 112.) Epic does not believe that
 26 the Joint Discovery Letter Brief and or any of the Supporting Exhibits meet the standard for
 27 sealing. But at Apple’s request, Epic is filing the documents in their entirety under seal. Pursuant

1 to subsection (e)(1) of Local Rule 79-5, Apple has four days to file a declaration establishing that
2 all of the designated material is “sealable” (as defined in Local Rule 79-5(b)).

3
4 Dated: December 28, 2020

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8 Respectfully submitted,

9 By: /s/ Lauren A. Moskowitz

10 Lauren A. Moskowitz

11 *Attorneys for Plaintiff Epic Games, Inc.*